Office-Supreme Court, U.S.
FILED
AUG 24 1964
JOHN F. DAVIS, CLERK

In the

Supreme Court of the United States

OCTOBER TERM 1963

No. 38

CITY OF EL PASO,

Appellant,

v.

GREENBERRY SIMMONS,

Appellee.

Appeal from the United States Court of Appeals for the Fifth Circuit

BRIEF FOR APPELLANT

WILLIAM J. MOUNCE,
of
HARDIE, GRAMBLING, SIMS & GALATZAN,
Third Floor, El Paso Natural Gas Company Building,
El Paso, Texas,
Attorney for Appellant.

WARLICK PRESS, INC.—2263 VALDINA STREET—DALLAS—ME 1-3130

SUBJECT INDEX

	Page
A. Opinion Below	1
B. Statement of Jurisdiction	1
C. Constitutional Provision and Statute Involved	2
D. Question Presented	4
E. Statement of the Case	4
F. Argument and Authorities	6
Article 5326 merely modifies the remedy by which the State of Texas terminates its land purchase agreements. The Court below therefore erred in adjudging the statute unconstitutional.	
G. Conclusion	13
H. Appendix	A-1

	Page
Aiken v. Kingsbury, 247 U.S. 484 (1918)	10
Anderson v. Neighbors, 59 S.W. 543 (1900)	12, 13
City of Chicago v. Atchison, Topeka & Santa Fe Railway Co., 351 U.S. 77; 78 S.Ct. 1063	2
Conley v. Barton, 260 U.S. 677 (1923)	12
Faulkner v. Lear, 258 S.W. 2d 147 (Tex. Civ. App. 1953—error refused)	6, 13
Gulf Production Company v. State, 231 S.W. 124 (Tex. Civ. App. 1921)	13
Home Building and Loan Association v. Blaisdell, 290 U.S. 398 (1934)	13
Richmond Mortgage and Loan Corporation v. Wachovia Bank, 300 U.S. 124 (1937)	12
Standifer v. Wilson, 93 Tex. 232; 54 S.W. 898 (1900)	7
Travelers Insurance Company v. Newson, 352 S.W. 2d 888 (Tex. Civ. App. 1962)	7
Waggoner v. Flack, 188 U.S. 595 (1903)	9
Wilson v. Standifer, 184 U.S. 399 (1902)	8
United States Constitution, Article I, Section 10	2, 4
Article 5326 Vernon's Annotated Texas Statutes	3, 4, 5, 6, 7, 12, 13
Chapter 47, Act of 1895	A-1
Chapter 129, Act of May 19, 1897	A-20
Act Approved April 19, 1901	A-26
Act Approved April 15, 1905	A-34
Act Approved May 16, 1907	A-37
Senate Bill 295, Acts of the 54th Legislature, Chapter 278, 1955	5, A-46

In the

Supreme Court of the United States

OCTOBER TERM 1963

No. 866

CITY OF EL PASO,

Appellant,

v.

GREENBERRY SIMMONS,

Appellee.

Appeal from the United States Court of Appeals for the Fifth Circuit

---

BRIEF FOR APPELLANT

OPINION BELOW

The decision appealed from is reported in Volume 320 Federal Reporter 2d Series, Pages 541-545. A copy of the decision appears in the Transcript of Record beginning at page 153.

STATEMENT OF JURISDICTION

Suit was instituted by Appellee, Greenberry Simmons, to quiet title to two parcels of land comprising 620.25 acres

located in the City and County of El Paso, Texas. Federal jurisdiction was based on 28 U.S.C.A. §1332. The trial court sustained Appellant's motion for summary judgment; however, the United States Court of Appeals for the Fifth Circuit, by decision dated July 18, 1963, reversed and remanded the case. Appellant's petition for rehearing was denied by order dated August 29, 1963, and judgment was entered on the decision of the United States Court of Appeals on September 7, 1963. Notice of Appeal was filed in the United States Court of Appeals for the Fifth Circuit on November 27, 1963. Appellant applied for, and by order dated February 15, 1964, was granted a thirty day extension within which to docket its appeal and file a jurisdictional statement. Probable jurisdiction was noted April 20, 1964. The United States Court of Appeals held a statute of the State of Texas unconstitutional. This appeal, therefore, is taken pursuant to 28 U.S.C.A. §1254 (2). Although the Court of Appeals remanded the case, for all practical purposes the decision can probably be considered as final. *Cf. City of Chicago v. Atchison, Topeka and Santa Fe Railway Co.*, 357 U.S. 77; 78 S.Ct. 1063 (1958).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

This case involves the following constitutional provision and statute:

A. CONSTITUTIONAL PROVISION.

Article I, Section 10 — United States Constitution

"No State shall enter into any Treaty, Alliance, or Confederation; grant Letter of Marque and Reprisal;

coin Money; emit Bill of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

B. STATUTE INVOLVED.

Article 5326 of Vernon's Annotated Texas Statutes

"If any portion of the interest on any sale should not be paid when due, the land shall be subject to forfeiture by the Commissioner entering on the wrapper containing the papers "Land Forfeited", or words of similar import, with the date of such action and sign it officially, and thereupon the land and all payments shall be forfeited to the State, and the lands may be offered for sale on a subsequent sale date. In any case where lands have heretofore been forfeited or may hereafter be forfeited to the State for non-payment of interest, the purchasers, or their vendees, heirs or legal representatives, may have their claims reinstated on their written request by paying into the Treasury the full amount of interest due on such claim up to the date of re-instatement, provided that no rights of third persons may have intervened. The right to re-instate shall be limited to the last purchaser from the State or his vendees or their heirs or legal representatives. Such right must be exercised within five (5) years from the date of the forfeiture. In case there is an outstanding valid grazing lease which would prevent re-instatement within the time prescribed by this Act, then such claim may be reinstated within sixty (60) days after the expiration of such grazing lease, provided application for reinstatement shall have been filed in the General Land Office within the five-year period above prescribed, accompanied with payment of all interest due thereon. In all cases the original obligations and penalties shall thereby become as binding as if no forfeiture had ever occurred. If any purchaser shall die, his heirs or legal representatives shall

have one (1) year in which to make payment after the first day of November next after such death, before the Commissioner shall forfeit the land belonging to such deceased purchased; and should such forfeiture be made by the Commissioner within said time, upon proper proof of such death being made, such forfeiture shall be set aside, provided that no rights of third persons may have intervened. Nothing in this Article shall inhibit the State from instituting such legal proceedings as may be necessary to enforce such forfeiture, or to recover the full amount of the interest and such penalties as may be due the State at the time such forfeiture occurred, or to protect any other right to such land."

QUESTION PRESENTED

The land purchase contracts upon which Appellee's claim is based were forfeited by the State of Texas for nonpayment of interest and were not reinstated within the five-year period required by *Article 5326*. The five-year limitation feature contained in the statute, however, was enacted subsequent to the time the land purchase contracts were entered into. The question therefore presented by this appeal is whether the application of the five-year limitation provision of *Article 5326* to Appellee's land purchase contracts is repugnant to Article 1, Section 10 of the United States Constitution.

STATEMENT OF THE CASE

Appellee's predecessors entered into purchase agreements with the State of Texas in 1910 (T.R. 43, 67). A Texas statute (*Article 4218f*, quoted in the Appendix beginning

on page A-20) in effect in 1910 provided that a forfeited land purchase contract could be reinstated by payment of all back interest, provided that the rights of no third party had intervened. *Article 4218f*, from which *Article 5326* was derived, was amended in 1941, to provide that the privilege of reinstatement must be exercised within five years from the date of forfeiture. The land purchase contracts in question provide essentially that the purchaser will pay a certain specified sum to the State of Texas and upon payment in full, the State will issue a patent covering the land. On July 21, 1947, the purchase contracts were forfeited for failure to pay interest (T.R. 26, 28). Appellee, via quitclaim deeds dated June 10, 1952, acquired the vendees' right, title and interest in and to the lands in question (T.R. 104, 110). Apparently Appellee in the latter part of July, 1952, filed an application for reinstatement pursuant to *Article 5326* (T.R. 120, 121); however, since the application was not filed within the five year period required by *Article 5326*, it was rejected (T.R. 118, 119). Thereafter, the lands in question were, on November 15, 1955, awarded to Appellant pursuant to Senate Bill 295, Acts of the 54th Legislature, Ch. 278, 1955, which Act appears in the Appendix hereof beginning on page A-46. Appellant paid the full purchase price and on January 16, 1956, received patents from the State of Texas (T.R. 26, 28). On August 31, 1961, Appellee instituted this action. As stated above, the trial court awarded Appellant summary judgment, but the decision was reversed by the United States Court of Appeals for the Fifth Circuit.

ARGUMENT AND AUTHORITIES

ARTICLE 5326 MERELY MODIFIES THE REMEDY BY WHICH THE STATE OF TEXAS TERMINATES ITS LAND PURCHASE AGREEMENTS. THE COURT BELOW THEREFORE ERRED IN ADJUDGING THE STATUTE UNCONSTITUTIONAL.

As stated above, the land purchase contracts upon which Appellee's claim is based were properly forfeited for non-payment of interest (T.R. 26, 28). Appellee's application for reinstatement was not filed within five years from the date of forfeiture, as provided by *Article 5326* (T.R. 26, 28). As far as we have been able to determine, *Faulkner v. Lear*, 258 S.W. 2d 147 (Tex. Civ. App. 1953—error refused), is the only decision of the Texas courts construing *Article 5326*. That case involved a fact situation similar to the one presently under consideration and the Texas Court of Appeals held that an application for reinstatement filed more than five years after the date of forfeiture was ineffective, stating at page 149:

> "Since the Taylor sale was shown to have been forfeited to the State for non-payment of interest, such sale could have been reinstated only in compliance with the Statute, Article 5326 Vernon's Annotated Statutes of Texas, as amended in 1941. This Article provided that any sale forfeited theretofore must be reinstated within five years after the effective date of the amending act. This date was May 2, 1941. Taylor and his assignees, therefore, were precluded from reinstating his sale after May 2, 1946, five years after the effective date of the amendment, even if the rights of no third party had intervened. The Legislature further amended

> this Act in 1951 so that such Article 5326 now provides that such a forfeited sale can be reinstated only if proper application is made within five years after the date of the forfeiture."

Since there was an outright refusal of the writ of error in the *Faulkner* case, the opinion has the same dignity, and is entitled to the same weight as an opinion by the Texas Supreme Court. *Travelers Insurance Company v. Newson*, 352 S.W. 2d 888 (Tex. Civ. App. 1962).

The sole question presented by this appeal is whether *Article 5326*, as applied to Appellee's situation, impairs the obligations of his predecessors' contracts with the State of Texas. In order to decide whether a contract obligation has been impaired it is first necessary to determine the obligation imposed upon the parties to the contract. This precise point was decided by the Supreme Court of Texas in *Standifer v. Wilson*, 93 Tex. 232; 54 S.W. 898 (1900). In the *Standifer* case, one Dolan entered into a land purchase contract with the State of Texas, pursuant to an Act approved July 8, 1879, as amended by an Act approved April 6, 1881. Such Acts provided that before the State could terminate land purchase contracts in the event of default, the State would have to institute appropriate court proceedings and obtain a judgment of forfeiture. The Acts were amended in 1897 to provide that in the event a purchaser of lands from the State defaulted in payment, the Commissioner of the General Land Office could declare a forfeiture merely by endorsement on the files of the General Land Office. Dolan's purchase was forfeited in accordance

with the latter Act. Wilson succeeded to Dolan's interest and in the ensuing title action contended that the forfeiture was invalid. Wilson's principal point on appeal was that, as to him, the Act of 1897 was an impairment of an obligation of his contract, and consequently unconstitutional. The Texas Supreme Court rejected this contention, reasoning that the method by which the State terminates its contracts when the purchaser defaults is not a part of the contract, and consequently can be later altered or modified. The Texas Supreme Court, in discussing the obligations contained in the contract, stated at page 900:

> "The contract there provided for is an executory contract of sale and purchase, which arises upon acceptance of and compliance with the stated terms of the offer made by the state for the sale of the lands. The purchaser presents his application, makes the cash payment, causes the land to be surveyed, and executes his obligation to perform the things to be done in the future. The contract then is complete, and its terms are fixed. (Citation) Both the state and the purchaser are bound, so long as there is compliance with the obligation, — the purchaser to make the further payments, and the state, upon completion thereof, to grant the land to the purchaser. But no title passes, and a right of rescission in the state may arise, just as it might arise in an individual, upon default in performance on the part of the other party. . . . There is no undertaking on the part of the State with the purchaser that the remedy prescribed in this statute and no other shall be pursued unless it is to be implied from the mere presence of the provisions in the statute; and we think it well settled that no such implication arises."

The case just cited was affirmed by the United States Supreme Court. *Wilson v. Standifer*, 184 U.S. 399 (1902).

The United States Supreme Court was confronted with a similar situation in the case of *Waggoner v. Flack*, 188 U.S. 595 (1903). In November of 1895, the land in question was purchased by one Phillips under the provisions of the Act of 1883, as amended by the Act of February 16, 1885. When Phillips purchased the lands, the State of Texas had no statutory authority to forfeit the purchase. An Act approved effective as of May 19, 1897 authorized the Land Commissioner to forfeit purchases of state lands for non-payment of interest. The forfeiture was accomplished by an endorsement on the Land Office file, and became final unless a suit contesting the validity of the forfeiture was instituted within six months from the date of endorsement. The Phillips purchase was forfeited for non-payment of interest, in accordance with the 1897 Act. Waggoner, Phillips' successor, contended that as to him, the 1897 Act was an unconstitutional impairment of the obligation of his contract since at the time his predecessor entered into the agreement, there was no statutory method by which the State could terminate a purchase contract. The Supreme Court denied this assertion, and held that a forfeiture provision or lack thereof did not become a part of the contract, and that a State could, from time to time, enact laws giving it a new or different remedy for violation of contracts, stating at page 601:

> "We must first decide what were the obligations of a contract which was created by the granting of Phillips' application for the purchase of this land, and the taking of his notes therefor. The Laws of Texas of 1883, Chapter 58, as amended by Chapter 12, page 13, Laws of 1885, furnished the evidence of the obligations of the contract. By those Acts it was made the duty of the

> Commissioner of the General Land Office, after an application for a grant of land had been made and approved, to issue a patent to the purchaser or his assigns, etc., upon payment of all the purchase money and interest upon the notes given for the purchase of the land, and provision was made for the giving of the notes or other evidences of the obligation of the purchaser to pay for the land. His obligation was to pay these notes as they matured. The obligation of the State was to give the patent as mentioned. What particular remedy then existed by which the State might enforce the obligations of the contract made by the purchaser is not material in this aspect of the case."

The Court further stated at page 603:

> "A purchaser of lands at the time Phillips purchased had no right to assume that the state would not alter the law in the future so far as to give it another and better or a quicker remedy for a violation of his contract by the purchaser than existed at the time the purchase was made. To enact laws providing remedies for a violation of contracts, to alter or enlarge those remedies from time to time as to the legislature may seem appropriate, is an exercise of sovereignty, and it cannot be supposed that the state, in a case like this, contracts, in a public act of its legislature, to limit its power in the future, even if it could do so, with or without consideration, unless the language of the act is so absolutely plain and unambiguous as to leave no room for doubt that its true meaning amounts to a contract by it to part with its power to increase the effectiveness of existing remedies as against those who purchase lands while the act remains alive. No such language is to be found in the act in question, and none ought to be implied."

Another case in point is that of *Aiken v. Kingsbury*, 247 U.S. 484 (1918). In that case, Aiken's predecessor purchased land from the State of California in 1869. At the time of the purchase the laws of California provided that in the

event a purchaser defaulted, the State, in order to terminate the contract, must bring a court proceeding and obtain a judgment of default. The purchaser or his assigns would then have twenty (20) days after entry of the judgment to redeem the land by paying all amounts due the State, plus Court costs. The earlier Acts were amended in 1889 to provide that, under certain circumstances, a land purchaser whose contract had been in default for a period of five years would lose all interest in the land unless he paid all past due interest within six months after passage of the Act. Aiken contended that the subsequent Act, as applied to him, was unconstitutional because it impaired the obligation of his contract with the State of California and deprived him of his property without due process of law. This Court found that the only obligation contained in the land purchase contract was that the State would furnish a patent to the land after the purchaser paid the stipulated sum. As to the enforcement of the contract, this Court states at pages 487-488:

> "The right of the State to foreclose such a contract for default in payment, and the right of the purchaser to redeem after a default decree, relate to the remedy as distinguished from the obligation of the contract, and both of these rights are constitutionally subject to modification by the State, within limits which were not exceeded in the Act before us. . . ."

There is no material distinction between the United States Supreme Court cases cited above and the situation now confronting this Court. The obligations imposed upon the parties to a land purchase contract are that the purchaser will pay the State a certain sum of money, and

upon payment in full in the manner provided, the State will issue a patent for the land. The other provisions contained in the Texas Public Land Acts pertain to the administration and enforcement of land purchase contracts. The section concerning foreclosure and reinstatement is merely the remedy by which the State enforces the land purchase contract. This Court, on numerous occasions, has held that State Legislatures may modify or change existing remedies, or prescribe new modes of procedure without impairing the obligations of contracts, if a substantial or efficacious remedy remains. *Conley v. Barton*, 260 U.S. 677 (1923); *Richmond Mortgage and Loan Corporation v. Wachovia Bank*, 300 U.S. 124 (1937). Under *Article 5326* a purchaser is given up to five years to remedy the default. This provision, Appellant submits, is most reasonable and considerably more lenient than provisions normally contained in land purchase agreements between private citizens.

Under *Article 4218f*, in effect at the time of execution of the land purchase contracts under consideration, a defaulting purchaser could have lost all right to the land immediately after the default to a third party purchaser. The five year limitation of *Article 5326* does not abridge or defeat any substantial right of a purchaser. At the time the land purchase contracts under consideration were entered into, the State of Texas was encouraging persons to settle upon its lands; *Anderson v. Neighbors*, 59 S.W. 543 (1900) consequently, the remedial provisions pertaining to land purchase contracts were quite liberal. At this time chances were excellent that if a forfeiture occurred, a third party would soon purchase the

lands if the lands were of any value. Times and circumstances, of course, have changed. It is common knowledge that the State of Texas no longer sells its lands except in very rare instances. As a result of this policy there is little likelihood that the rights of a third party will intervene in forfeited land purchase contract situations as was contemplated by *Article 4218f*. Consequently, the privilege of re-instatement became perpetual for all practical purposes. This was obviously the mischief *Article 5326* was designed to prevent and which, Appellant submits, is a legitimate exercise of legislative power. *Cf. Home Building and Loan Association v. Blaisdell*, 290 U.S. 398 (1934). Admittedly there is dicta in Texas decisions indicating that the privilege of re-instatement of a forfeited land purchase contract is a vested right. Cf. *Gulf Production Company v. State*, 231 S.W. 124 (Tex. Civ. App. 1921) and *Anderson v. Neighbors* (Supra). Such statements are merely dicta and have been refuted by the enactment of *Article 5326* and the decision of *Faulkner v. Lear* (Supra).

CONCLUSION

Article 5326 does not impair any obligation contained in the land purchase contracts between Appellee's predecessors and the State of Texas. The statute merely alters the remedy by which the State of Texas may rescind a land purchase contract in the event of default. Since Appellee failed to comply with the provisions of the statute, his rights to the lands in question terminated. Appellant respectfully submits that the decision of the United States Court of Appeals for

he Fifth Circuit should be reversed and the decision of the Jnited States District Court for the Western District of Texas should be affirmed.

Respectfully submitted

HARDIE, GRAMBLING, SIMS & GALATZAN,
Third Floor, El Paso Natural Gas Company Building,
El Paso, Texas,

By Thomas Hardie
Attorney for Appellant.

PROOF OF SERVICE

I, William J. Mounce of Hardie, Grambling, Sims & Galatzan, attorneys of record for the City of El Paso, Appellant herein, depose and say that on the 22nd day of August, 1964, I served a copy of the foregoing Brief for Appellant on Greenberry Simmons, Appellee herein, by mailing, air mail postage prepaid, a copy of same to Mr. Greenberry Simmons, Attorney at Law, Kentucky Home Life Building, Louisville, Kentucky and by mailing a copy of said Brief for Appellant to Mr. Harold Long, Attorney at Law, El Paso National Bank Building, El Paso, Texas, attorney for Greenberry Simmons.

Wm J. Mounce

WILLIAM J. MOUNCE

SUBSCRIBED AND SWORN TO before me by William J. Mounce at El Paso, Texas, this 22nd day of August, 1964.

Lee Jaggars

Notary Public,
El Paso County, Texas

APPENDIX

Chapter 47, Act of 1895:

"Section 1. Be it enacted by the Legislature of the State of Texas: That all lands heretofore or hereafter surveyed and set apart for the benefit of the public free schools, the Lunatic Asylum, the Blind Asylum, the Deaf and Dumb Asylum, and the Orphan Asylum shall be sold and leased under the provisions of this act.

Sec. 2. The Commisioner of the General Land Office is hereby vested with all the power and authority necessary to carry into effect the provisions of this act, and shall have full charge and discretion of all matters pertaining to the sale and lease of said lands, and their protection from free use and occupancy and from unlawful enclosure, with such exceptions and under such restrictions as may be imposed by the provisions of this act, or by the Constitution of the State. He shall, as soon as practicable, adopt such regulations not inconsistent with the Constitution or this act as may be deemed necessary for carrying into effect the provisions of this act, and may from time to time alter or amend such regulations so as to protect the public interest; but all regulations shall be submitted to the Governor for his approval before adoption or promulgation. He shall adopt all necessary forms of applications for sales or leases and all other forms necessary or proper for the transaction of the business imposed upon him by this act, and may from time to time call upon the Attorney General to prepare such forms; and it shall be the duty of that officer to furnish the Commissioner of the General Land Office with such advice and legal assistance as may be requisite for the due execution of the provisions of this act; and it shall be the duty of such Commissioner to call upon the Attorney General for advice whenever there is any doubt as to the meaning of this act or any provisions thereof.

Sec. 3. The Commissioner of the General Land Office shall from time to time, as the public intearest may require,

cause any or all of the lands belonging to the several funds mentioned in this act to be carefully and skillfully classified and valued that have not heretofore been classified, and for this purpose he may appoint, with the approval of the Governor, such number of competent agents, who shall be citizens of the county or district where such land is situated, as may be necessary, or may determine and declare the classification and valuation without the aid of such agents, and upon such facts as may be satisfactory to the Commissioner. Such agents shall receive for their work a reasonable compensation, to be fixed by the Commissioner of the General Land Office, and not to exceed the sum of three dollars per section; and no such expense shall be incurred in the absence of an appropriation by law to cover such expenditure, and the State shall not be liable for any expenditure of this character incurred in excess of current appropriations.

Sec. 4. It shall be the duty of such agents as may be appointed under the provisions of this act, under such restrictions and instructions as may be prescribed by the Commissioner of the General Land Office, to classify such lands belonging to the several funds mentioned in this act as the Commissioner may direct, into agricultural, pasture, and timber lands, and for this purpose they shall cerefully examine the same, and after such examination they shall prepare an accurate plat of each section, showing the relative proportions of timber and open land on such section, and their situation; also, the quality of the soil, the topography of the land, and the quality and kind of timber, and the streams and other sources of water supply, and their location, and such other facts as may be important; and from time to time, as may be prescribed by the Commissioner of the General Land Office, such agent shall prepare and forward to the Commissioner, with such plats, a tabulated statement of such lands so examined by him, with the value of each section, and such plats and reports when approved by the Commissoner, shall be filed in the General Land Office as a part of the records of said office; but nothing in this act shall be construed to require or authorize a classification of lands already classified under former laws: Provided, that any section or

part of any section heretofore classified as timbered land which is not pine land nor valuable chiefly for the timber thereon may be classified under the provisions of this act as agricultural lands.

Sec. 5. When any portion of said land has been classified to the satisfaction of the Commissioner under the provisions of this act or former laws, such lands shall be subject to sale, but to actual settlers only, and in quantities of not less than forty acres, and in mutiples thereof, nor more than one section containing six hundred and forty acres more or less: Provided, that when there is a fraction less than forty acres of any section left such fraction may be sold; but lands classified as purely pasture lands may be sold in quantities not to exceed four sections to the same settler.

Sec. 6. It shall be the duty of the Commissioner of the General Land Office to notify in writing the county clerk of each county of the valuation fixed upon each section of land in his county, and in each county attached to it for judicial purposes, which he offers for sale, which notification shall be kept by the clerk in his office and recorded in a well bound book which shall be open to public inspection.

Sec. 7. All lands belonging to the public free schools and the several asylum funds shall be sold at no less than two dollars per acre, except pasture lands, which shall be sold at not less than one dollar per acre, and all timber lands shall be sold at not less than five dollars per acre. By timber lands as here used is meant lands valuable chiefly for the timber thereon.

Sec. 8. Any bona fide actual settler who may reside on any part of the lands the sale of which is authorized by this act may go into effect, shall have the prior right for a period of ninety days after this act goes into effect, or after said land shall have been placed upon the market, to purchase such quantity of land as may be limited by this act, to include his improvements, upon complying with the provisions of this act regulating sales as in other cases, such land shall be appraised without reference to the improvements thereon. Any bona fide settler who has here-

tofore purchased or who may hereafter purchase not exceeding one section of agricultural land, shall have the right to purchase three strictly pastoral sections upon his making oath that he is not acting in collusion with others for the purpose of buying for any other person or corporation, and that no other person or corporation is directly or indirectly interested in the purchase of the same.

Sec. 9. All sales shall be made by the Commissioner of the General Land Office, or under his direction, and he shall prescribe suitable regulations whereby all purchasers shall be required to reside upon as a home the land purchased by them for three consecutive years next succeeding the date of their purchase, except when otherwise provided. Such regulations shall require the purchaser to reside upon the land for three consecutive years herein mentioned, and to make proper proof of such residence and occupancy to the Commissioner of the General Land Office within two years next after the expiration of said three years, by his affidavit corroborated by the affidavits of three disinterested and credible persons, to be certified by some officer authorized to administer oaths, and on making such proof the Commissioner shall issue to the purchaser, his heirs and assigns, a certificate showing that fact. If, however, any purchaser has sold his purchase, or any part thereof, his vendee shall be permitted to compute the time of the occupancy of his vendor as a part of his own occupancy; and if any person has sold the whole or any part of his purchase under this or any former law, his vendee, or if he refuses to do so, the vendor himself, may make proof of occupancy as provided herein. Any person desiring to purchase land in accordance with the provisions of this act shall forward his application to the Commissioner, describing the land sought to be purchased, which application shall be accompanied with the affidavit of the applicant, in effect that he desires to purchase the land for a home, and has in good faith settled thereon, except where otherwise provided herein, and he shall also swear he is not acting in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is interested in the purchase thereof. Any

owner of land heretofore purchased, and which land has been or may be forfeited for nonpayment of interest, shall have ninety days prior right after this act goes into effect, or after the land is again placed upon the market, to purchase said land without the condition of settlement and occupancy, in case it has been occupied for three consecutive years as required by law; but if not, then he shall reside thereon until the occupancy under the first and last purchase shall together amount to said term of three years: Provided, that when any forfeiture has been made the Commissioner of the General Land Office shall add to the appraised value of such land the amount of interest due thereon at the time of forfeiture, which shall be paid in cash with the first payment of one-fortieth of the appraised value of the land when purchased under the preference right to purchase given herein. Any original purchaser or his vendee of any of the lands the sale of which is provided for in this act, who has improved such land as a home, and who has been forced to temporarily abandon same on account of drouth, and who shall in good faith reoccupy the same, either by themselves or vendees, within six months after this act goes into effect, shall not have the forfeiture declared against them under the law providing for the forfeiture of such lands for non-occupancy: Provided, that they shall make affidavit, supported by the affidavit of three disinterested witnesses, that they have reoccupied the land as a home in good faith, and that they had abandoned the same since their purchase on account of the drouth and not otherwise; and such absence shall not be deducted from the three years occupancy required by law in making final proof of occupancy: And provided further, that any purchasers or their vendees of such lands who have failed to make proof of occupancy as required by the law regulating such purchases shall have six months after this act shall take efect to make such proof of occupancy as required by the provisions of this act. The purchaser shall transmit to the Treasurer of the State one-fortieth of the aggregate purchase money for the particular tract of land, and send to the Commissioner his obligation to the State, duly executed, binding the purchaser to pay to the State on the first day in November

of each year thereafter, until the whole purchase money is paid, one-fortieth of the aggregate price, with interest at the rate of three per cent per annum on the whole unpaid purchase money, which interest shall also be payable on the first day of November of each year; and upon receipt of one-fortieth of the purchase money by the Treasurer, and the affidavit and obligation aforesaid by the Commissioner, the sale shall be deemed and held effective from the date the affidavit and obligation are filed in the General Land Office: Provided, that if the land applied for be timbered land, then the purchaser shall be required to pay the full amount of the purchase money at the time of his purchase.

Sec. 10. Purchasers shall have the option of paying the purchase money for their lands in full at any time after they have occupied the same for three consecutive years; and when they have made such payment in full, together with the proof that they have occupied the land for three consecutive years, they shall receive patents for the same upon payment of the patent fees prescribed by law. Purchasers may also sell their lands or a part of the same, in quantities of forty acres or multiples thereof, at any time after the sale is effected under this act, and in such cases the vendee, or any subsequent vendee, or his heirs or legatees, shall file his own obligation with the Commissioner of the General Land Office, together with the duly authenticated conveyance or transfer from the original purchaser and the intermediate vendee's conveyance or transfer, if any there be, duly recorded in the county where the land lies or to which said county may be attached for judicial purposes, together with his affidavit, in case three years residence has not already been had upon said land and proof made of that fact, stating that he desires to purchase the land for a home, and that he has in good faith settled thereon, and that he has not acted in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is interested in the purchase, save himself, and thereupon the original obligation shall be surrendered or canceled or properly credited, as the case may be, and the vendee shall become the purchaser direct from the State, and be subject

to all the obligations and penalties prescribed by this act, and the original purchaser shall be absolved in whole or in part, as the case may be, from further liability thereon: Provided, that whenever a town shall be located and established upon any lands sold under this or any former act, the purchaser or his vendee shall be permitted to pay the entire balance of principal and interest due the State upon such land and obtain a patent therefor at any time, but no such payment shall be permitted or patent issued until such purchaser or owner of such land shall file in the General Land Office a certified plat of such town, made by a surveyor, which shall be accompanied by the affidavit of the owner of such land, corroborated by the affidavit of five disinterested and credible citizens of the county, to the effect that a town, giving its name, has been located and established upon the land, and that there has been erected therein, and is being occupied by bona fide citizens, twenty business and residence houses, or either, or both.

Sec. 11. If upon the first day of November of any year the interest due on any obligation remains unpaid, the Commissioner of the General Land Office shall endorse on such obligation "Land Forfeited," and shall cause an entry to that effect to be made on the account kept with the purchaser, and thereupon said land shall thereby be forfeited to the State without the necessity of re-entry or judicial ascertainment, and shall revert to the particular fund to which it originally belonged, and be resold under the provisions of this act or any future law: Provided, if any purchaser shall die, his heirs or legal representatives shall have one year in which to make payment after the first day of November next after such death, and shall be absolved and exempt from the requirement of settlement and residence thereon. And if any purchaser shall fail to reside upon and improve in good faith the land purchased by him, he shall forfeit said land and all payments made thereon to the State, in the same manner as for non-payment of interest, and such land shall be again for sale as if no such sale and forfeiture had occurred: Provided, that all necessary and temporary absence from such land of such purchaser, for the time of not more than six months

in any one year, for the purpose of earning money with which to pay for the land; or for the purpose of schooling his children, shall not work a forfeiture of his title: Provided, further, that nothing in this section contained shall be construed to inhibit the State from instituting such legal proceedings as may be necessary to enforce such forfeiture, or to recover the full amount of the interest and such penalties as may be due the State at the time such forfeiture occurred, or to protect any other right to such land, which suits may be instituted by the Attorney General or under his direction, in the proper court of the county in which the land lies or of the county to which such county is attached for judical purposes: Provided, this section shall be printed on the back of the receipt.

Sec. 12. In all cases where persons have purchased or may hereafter purchase State, school or asylum lands under any act of the Legislature authorizing the sale thereof and requiring a residence of three years thereon, and said persons have so resided upon said land or may hereafter reside thereon for the period of three years as required by law, and their files have been or may hereafter be cancelled and purchases annulled by the Commissioner of the General Land Office on account of conflict with other surveys, said persons shall have the right to purchase other lands of the classes mentioned in this act without being required to reside thereon. Persons desiring to avail themselves of the benefits of this provision shall make satisfactory proof to the Commissioner of the three years residence under their first purchase.

Sec. 13. In all cases where any of the lands mentioned in this act have been heretofore sold under any law authorizing the sale thereof, and the original purchaser shall have sold or may hereafter sell any part of his purchase in quantities of forty acres or multiples thereof, and the conveyance to his vendee or vendees is filed in the General Land Office after having been duly recorded in the proper county, the Commissioner and Treasurer shall credit his account with the value of the land sold, and they shall open up new accounts with the original purchaser and such vendee or vendees, and

the Commissioner of the General Land Office shall patent said land to the owners thereof in quantities of forty acres or multiples thereof: Provided, that when any of such land is situated within three miles of a county seat it may be patented in twenty acre tracts.

Sec. 14. The Commissioner of the General Land Office is hereby authorized to patent in quantities of not less than one nor more than five acres any of the vacant and unappropriated public domain of Texas or any of the lands mentioned in this act as sites for cemeteries, churches or school houses. When the land is desired as a location for a school house, the patent shall issue to the county judge of the proper county and his successors in office in trust for that purpose; and when desired for a church house or a cemetery, it shall be issued to trustees designated by those requesting the patent. If the land has been previously sold by the State and not patented, the owner thereof shall execute a deed therefor to the county judge or trustees as the case may be, and cause the same to be recorded in the office of the county clerk of the proper county, and to be filed in the General Land Office, and shall be entitled to credit on his account with the State for the value therefor. Except in case of vacant land the value of the land shall be deposited with the State Treasurer, and in all cases the patent fees shall be paid to the Commissioner of the General Land Office before patent issues. Such land shall be taken from the margin of a tract or section or of a subdivision thereof, as the case may be.

Sec. 15. The Commissioner of the General Land Office shall retain in his custody as records of his office all applications, affidavits, obligations and all other papers relating to the sales of said lands, and shall cause to be kept accurate accounts with each purchaser. All purchase money due upon lands, as well as accrued interest, and all other moneys arising from the sales or leases of said lands shall be paid by the purchaser or lessee direct to the Treasurer of the State, who shall cause an accurate account to be kept with each purchaser, and who shall execute duplicate receipts for all sums of money paid

to him under the provisions of this act, one of which receipts shall be delivered to the purchaser or his agent, and the other transmitted to the Commissioner of the General Land Office.

Sec. 16. The Commissioner of the General Land Office shall adopt such regulations for the sale of the timber on the timbered lands as may be deemed necessary and judicious. Such timber shall not be sold for less than five dollars per acre, cash, except in such cases as the Commissioner may ascertain by definite examinations by an approved agent appointed by him for that purpose, to be paid by the purchaser, to be sparsely timbered or containing timber of but little value, in which case he may sell the timber on such sections or part of sections at its proper value: Provided, such timber is sold at not less than two dollars per acre. The purchaser shall have five years from the date of his purchase within which to remove the timber therefrom, and in case of failure to do so, such timber shall thereby be forfeited to the State without judicial ascertainment: Provided, that all timbered lands from which the timber has been cut and taken off may be placed on the market and sold as agricultural or grazing lands, according to the classifications to be made by the Land Commissioner: Provided, that the purchaser or his vendees of any such timber shall have the right to purchase the land upon which such timber so purchased is situated at two dollars per acre, cash, at any time before the expiration of five years from date of purchase of timber under the provisions of this act.

Sec. 17. The public lands and all lands referred to in the several funds mentioned in this act shall be leased by the Commissioner of the General Land Office under the provisions of this act. All lands classified as agricultural and all lands containing permanent water thereon shall be leased for a term of five years or less at not less than three cents per acre per annum, and all lands classified as pasture or dry grazing lands shall be leased for a term of not more than ten years at not less than two cents per acre per annum, which rental shall be paid yearly in advance, the first payment to be made at the time the lease contract is entered into. If at the termination of any lease the lands covered thereby are still for lease the lessee thereof shall have the preference right

to again lease such lands theretofore leased by him upon the terms and at the prices then fixed by law. All leases shall be executed under the hand and seal of the Land Commissioner and delivered to the lessee or his duly authorized agent, and such lease shall not take effect until the first annual rental is paid, and such lease thereof duly filed for record in the clerk's office of the proper county, and it shall not be necessary for the Commissioner to acknowledge such lease contract so signed and delivered; and all leases under the provisions of this act shall be advertised by the Commissioner in such manner as he may think best, and let to the highest responsible bidder in such quantities and under such regulations as he may think to the best interest of the State, not inconsistent with the equities of the occupant. All bids and offers to lease may be rejected by him prior to signing the lease contract, for fraud or collusion, or other good and sufficient cause.

Sec. 18. Any person desiring to lease any portion of the lands belonging to any of the funds mentioned in this act shall make application in writing to the Commissioner of the General Land Office, specifying and describing the particular lands he desires to lease, and thereupon the Commissioner, if satisfied that the lands applied for a : not in immediate demand for purposes of actual settlement, shall notify the applicant in writing that his proposition to lease is accepted, and thereupon he shall execute and deliver to the lessee, in the name and by the authority of the State of Texas, a lease of said land for such term as may be agreed upon, and deliver the same to such lessee when satisfied that the lessee has paid to the Treasurer of the State the rent for one year in advance. No lands which are now or may hereafter be classified as grazing or pasture lands shall be subject to sale, nor shall the possession thereof by the lessee be disturbed during the term of such lease, except as herein provided, so long as the rents are paid promptly in advance each year, as required by this act. Any actual settler upon any of the lands mentioned in this act, being the head of a family, shall have the right to buy at any time not more than three additional sections of strictly pasture lands, notwithstanding any lease thereof, unless by some other actual

settler; the head of a family, leasing not more than three sections. Whenever any leaseholder has leased from the State of Texas exceeding ten sections, any actual settler, being the head of a family, shall have the right to lease within a radius of five miles of the land occupied by him not exceeding three sections of the land held by such larger leaseholder, but shall not be allowed thereby to reduce the larger leasehold to less than ten sections: Provided, that any man not the head of a family shall have this preference right to lease three sections after having placed two hundred dollars worth of improvements on the section purchased by him: Provided, that in all cases where the actual settler having purchased one section of land is permitted by the provisions of this section to buy or lease additional lands, and thus terminate the lease of the larger leaseholder, he shall be required to so select such additional lands sought to be purchased or leased by him as that by an exchange of lands, section for section and acre for acre, of like quality and class with the larger leaseholder, he can secure the quantity of land he desires to purchase or lease in a solid body; and in case the larger leaseholder desires to do so the actual settler so purchasing or leasing the additional lands in this section mentioned shall make such exchange with him, and shall be required to fence the same separate and apart from the lands of the larger leaseholder; but in no case shall the actual settler be allowed to purchase or lease the lands and terminate the lease of the larger leaseholder under the provisions of this section upon which there is a permanent or artificial water supply; and in no case shall such actual settler be permitted to so select such additional lands for purchase or lease as that by an exchange of lands with the larger leaseholder such larger leaseholder will be required to give in exchange any lands upon which there may be improvements of the value of two hundred dollars. In case the larger leaseholder does not desire to exchange lands, as herein provided, with the actual settler, or upon request made by such actual settler refuses to do so within a reasonable time, then he shall not be required to fence his land, but may turn loose inside of any inclosure in which his lands may be situated not more than one head of cattle or horses, or in lieau thereof four head of sheep or

goats, for every ten acres of land so purchased or leased by him: Provided further, that nothing herein shall be construed so as to prevent either lessee from fencing his own land from the other if he should desire to do so, or to require the small leaseholder to fence his lands at all unless the large leaseholder shall have his leasehold fenced: And provided further, that nothing in this section shall be so construed as to permit any actual settler, either by purchase or lease, or by both, to terminate the lease of the larger leaseholder upon more than four sections: And provided further, that north of a line extending west from the southeast corner of Callahan county to the southeast corner of Martin county; thence north to the south line of Lynn county; thence west to the southwest corner of Lynn county; thence north to the south line of Castro county; thence west to the line of New Mexico, the settler exercising the preference right herein given to buy or lease within the enclosure of another may so buy or lease any lands except a section on which there are improvements of the value of two hundred dollars, or on which there is a permanent artificial water supply, and shall not be required to enclose his lands separate from the lands of the larger leaseholder unless he can obtain the full amount of four sections in a solid body, or unless the same can be secured in a solid body by exchange of lands for the term for which he leases, section for section or acre for acre, with the larger leaseholder; and in all cases where he is not required by the provisions of this act to enclose his lands he may turn loose not more than one head of horses or cattle, or in lieu thereof four head of sheep or goats, for every ten acres of land purchased or leased by him and unenclosed. Each violation of the provisions of this act which restricts the number of stock that may be turned loose on lands leased from the State shall be an offense, and the offender, on conviction, shall be punished by fine of one dollar for each head of stock he may so turn loose, and each thirty days violation of the provisions of this section shall constitute a separate offense. Any agricultural land that may be leased by an actul settler shall be subject to sale and settlement, but in case his lease does not embrace more than three sections, only on condition that the purchaser enclose with

posts and at least two wires the land purchased by him separate from the land held by the lessee, and failure to so enclose it within three months from the date of the purchase shall be sufficient cause to authorize the Commissioner to cancel the contract of purchase and reinstate the lease. In all cases where the lease is terminated under any of the provisions hereof, before the expiration of the term of lease, the lessee shall have a pro rata credit upon his next year's rent, or the money refunded to him by the Treasurer, as he may elect. On the expiration of his lease or its termination under any provision of this section the lessee shall have the right for a period of sixty days to remove any or all the improvements he shall have placed upon the leased premises.

Sec. 19. Any person desiring to lease any portion of the lands aforesaid on which no permanent water supply exists, shall notify the Commissioner of the General Land Office in writing that he desires to lease lands, specifying and describing them, provided he can obtain the necessary supply of water by boring or otherwise, and that he will within ninety days lease said lands, provided such water supply can be obtined; he shall also make and file with the Commissioner of the General Land Office his bond, with good and sufficient personal security in a sum equal to one year's rental of the quantity of land applied for, payable to the State of Texas, conditioned that he will diligently and in good faith try to secure water on such land during such ninety days, and if secured will lease the designated lands for the term prescribed herein, and thereupon the Commissioner shall for such ninety days withhold the lands thus designated from lease to any other person; within or at the expiration of said ninety days and annually thereafter such applicant to lease shall pay to the State of Texas, in advance, one year's rental of the land applied for by him, on satisfactory proof of which payment the Commissioner shall execute and deliver to the lessee a lease of the said lands, signed by himself officially and attested by the seal of the Land Office, together with which he shall deliver up the bond of said lessee, marked "Satisfied." If the said lessee shall fail to apply for his lease and make the payment aforesaid within said ninety days, and shall

also within said ninety days fail to make proof to the satisfaction of the Commissioner of the General Land Office within that time that he has in good faith and diligently used proper means and expended proper efforts to secure a water supply on such land and failed, then and in that case the Commissioner shall mark such bond "Forefeited," and shall deliver the same to the Attorney General of the State, who shall at once cause the said bond to be sued upon and collected; and such collection shall become a part of the available school fund. The penalty stated in such bond is hereby declared to be liquidated damages, and judgement for that sum shall in all cases be recovered by the State. Proof satisfactory to the Commissioner of the General Land Office that proper, suitable and diligent effort had been made by such applicant to secure water, and that sufficient water could not be secured, shall relieve the principal and sureties on said bond from all responsibility therein, and it shall be marked "Satisfied" by said Commissioner and delivered to the principal therein. No lease of less than four sections of unwatered pasture lands shall be made unless such number includes all unleased land in that vicinity belonging to the several funds mentioned in this act. Lessees or their vendees who shall have at their own expense secured water on their leaseholds in accordance with the provisions of this section shall, at the expiration of their lease contract, have the right to a renewal of their leases for another term of five years at the price then provided by law, by giving sixty days written notice to the Commissioner, as provided in the preceding section.

Sec. 20. All lessees from the State of lands named in this act, who are one year or more in arrears on their contracts for rent, shall have the right for the period of four months from the time this act shall go into effect, but not longer, within which they may execute and deliver to the Commissioner of the General Land Office their respective obligations in writing, with personal security satisfactory to the Commissioner, for the respective sums of money then owing by them to the State; and on delivery of such obligation to the Commissioner and the cash payment of one year's rental

in advance, they shall have the right to have their lease contracts cancelled, and may lease such lands anew under this act. Such obligation shall bind such lessees to pay said sums of money, one-third in one year, one-third in two years, and the remainder in three years from date, and shall draw six per cent interest per annum, payable annually; and thereupon the Commissioner shall balance their accounts on the books of his office and cancel and deliver up their old leases and make to them new leases under this act. All lessees who are not in arrears for rent or who shall pay all indebtedness on leases, have the right to surrender their present leases and lease anew their said lands under this act.

Sec. 21. All lessees shall pay the annual rents due for leased lands directly to the Treasurer of the State, who shall execute receipts in duplicate for each payment made by any lessee, one of which receipts shall be delivered to the lessee and the other transmitted to the Commissioner of the General Land Office. The Treasurer shall cause to be kept an accurate account with each lessee and the Commissioner of the General Land Office shall file in his office all applications and other papers relating to leases, and keep a record of all leases made, which papers shall constitute a part of the records of his office.

Sec. 22. If any lessee shall fail to pay the annual rent due in advance for any year within sixty days after such rents shall become due, the Commissioner of the General Land Office may declare such lease cancelled by a writing under his hand and seal of office, which writing shall be filed with the other papers relating to such lease, and thereupon such lease shall immediately terminate, and the lands so leased shall become subject to purchase or lease under the provisions of this act. Such lease shall not be made to original lessees until all arrears are fully paid. During the continuance of all leases, and after forfeiture, the State shall have a lien upon all property owned by thea lessee upon the leased premises to secure the payment of all rents due, which lien shall be superior to all other liens whatsoever; and it shall not be essential to the preservation or validity of such lien that it shall be reserved in the instrument of lease.

Sec. 23. Lessees shall have the right at any time to purchase their leased lands, subject to the limitations as to quantity provided by this act, and at the price and on the conditions herein provided, without reference to any improvements made on such lands by such lessees; and all improvements made by lessees on lands leased by them are hereby declared to be personal property, which may be removed by such lessees on the expiration of their lease contracts; and they shall have sixty days after such expiration in which to remove the same.

Sec. 24. If the Governor shall at any time be informed upon the affidavit of some credible person that any portion of the public lands or the lands belonging to any of the several funds named in this act have been enclosed, or that fences have been erected thereon without authority of law, he is authorized in his discretion to direct the Attorney General to institute suit in the name of the State for the recovery of such lands and damages, and a fee of not less than ten dollars for the attorney when the sum recovered is less than one hundred dollars, and when it is over that sum the fee shall be ten per cent, to be paid by the defendant for the use and occupancy of the same, and the removal of such enclosures and fences and such damages shall not be for a less sum than the amount of all the leases due during such occupancy. Such suit may be instituted in the district court of the judicial district in which the land or any portion thereof (is) situated; and upon application of the Attorney General and without affidavit or bond the court in which suit is pending shall issue a writ of sequestration directed to any sheriff of the State, commanding and requiring such officer to take such land and all property thereon belonging to the person or persons so unlawfully occupying said land into his actual custody, and hold the same subject to the further orders of the court. Such writ of sequestration may be executed by any sheriff of the State into whose hands it may be delivered, and it shall be the duty of any sheriff into whose hands it may come to proceed and execute such writ. The defendant in such suit may replevy as in ordinary cases by giving bond as prescribed by law, and such cases shall have precedence on the docket and stand for trial before

all other cases; and in case judgment is recovered by the State in such suit, the court shall order such enclosures or fences to be removed and shall tax the costs of the suit, if any, against the defendant; and all property found upon the land belonging to the defendant, not exempt from execution, shall be liable to the payment of such costs and damages in addition to the personal liability of the defendant. Appeals may be prosecuted from all judgments in such cases as in ordinary cases, except that the State shall not be required to give bond to perfect its appeal, and such cases on appeal shall have precedence over all other cases. If any person shall make a lease contract, and after the same is enclosed by fence shall for any cause decide not to continue payment of his lease, either in whole or in part, he shall give public notice by publication in any local paper having the largest circulation, for at least sixty days before the time in which his next annual payment shall become due, that he will not continue his lease after the year for which payment is made, and shall also state the number and block of the land which he will not lease inside his enclosure, if he only intends to surrender a part of his lease, and shall post and keep posted for said sixty days notices on all the gates of his pasture of such intention; then, and then only, he shall not be subject to the suit nor be liable for the damages provided for in this section.

Sec. 25. It shall be unlawful for any person to fence, use, occupy or appropriate by herding or line riding, any portion of the public lands of the State, or of the lands belonging to any particular fund specified in this act, without having first obtained a lease of such lands in acordance with the provisions of this act. Any person, whether owner of stock, manager, agent, employee or servant, who shall fence, use, occupy or appropriate by herding or line riding any portion of such lands without a lease thereof, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be fined not less than one hundred nor more than one thousand dollars, and in addition thereto shall be imprisoned in the county jail for a period of not less than three months nor more than two years. Each day of such fencing, occupying, using or

appropriating by herding or line riding shall be deemed a separate offence, and any person so offending may be prosecuted by indictment or information in the proper court of the county where any portion of the land lies, or to which it may be attached for judicial purposes, or in the county of Travis, and jurisdiction of such offences is hereby vested in said courts; and in case any indictment or information is preferred or filed against a non-resident of this State for a violation of this article, it shall be the duty of the Governor to demand the extradition of the defendant from the proper officer of any State or Territory where he may be found, in order that he may be brought to trial. "Fencing," within the meaning of this article, is the erection of any structure of wood, wire or both, or any other material intended to prevent the passage of cattle, horses, mules, asses, sheep, goats or hogs, whether the same shall enclose lands on all sides or be erectead on one or more sides. Any appropriation of land belonging to any particular fund specified in this act or of the public lands of this State, without having first obtained a lease thereof, by fencing of any kind, or by enclosures consisting partly of fencing and partly of natural obstacles or impediments to the passage of live stock, shall be deemed an unlawful appropriation punishable as provided in this article for appropriating such lands, and each day said land is appropriated shall be deemed a separate offense.

Sec. 26. The Commissioner of the General Land Office may withhold from lease any agricultural lands necessary for purposes of settlement; and no agricultural lands shall be leased if in the judgment of the Commissioner they may be in immediate demand for settlement, but such lands shall be held for settlement and sold to actual settlers only under the provisions of this act; and all sections or fractions of sections in all counties organized prior to the first day of January, 1875, except El Paso, Pecos and Presidio counties, which sections are detached and isolated from other public lands, may be sold to any purchaser except to a corporation, without actual settlement, at not less than two dollars per acre, upon such terms as the Commissioner of the General Land Office may prescribe.

Sec. 27. All laws and parts of laws in conflict with this act are hereby repealed.

Sec. 28. The inadequate provisions under the present law for support of the public free schools and the necessitous condition of the available school fund creates an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and that this act take effect and be in force from and after its passage, and it is so enacted."

Chapter 129, Act of May 19, 1897:

"Section 1. Be it enacted by the Legislature of the State of Texas: That Articles 4218d and 4218i, Chapter 12a, Title 87, of the Revised Civil Statutes of the State of Texas be and the same are hereby repealed, and that Articles 4218ff and the same are hereby repealed, and that Articles 4218ff and 4218fff be added thereto, and Articles 4218e, 4218f, 4218h, 4218y of said chapter and title be amended so as to hereafter read as follows:

Article 4218e. The commissioner of the general land office may, from time to time, as the pubilc interest may require, classify any or all of the lands belonging to the several funds mentioned in this chapter that have not been heretofore classified, upon such facts as may be satisfactory to him, designating the same as agricultural, grazing or timbered land, according to the fact in the particular case; and he may prescribe such regulations in relation thereto as he may deem necessary to secure a correct classification. He may also reclassify any lands heretofore erroneously classified, upon the official certificate of the commissioners' court of the county in which said land is situated, or of the county to which such county is attached for judicial purposes, certifying what the proper classification should be, said certificate to be signed by the entire commissioners' court, including the county judge, or upon such other evidence as may be satisfactory to the commissioner.

Article 4218f. When any portion of said land has been classified to the satisfaction of the commissioner of the

general land office, under the provisions of this chapter or former laws, such lands shall be subject to sale, but to actual settlers only, except where otherwise provided by law, and in quantities of not less than eighty acres or multiples thereof, nor more than four sections containing six hundred and forty acres, more or less; provided, that the purchaser shall not include in his purchase more than two sections of agricultural land; and provided, that where there is a fraction less than eighty acres of any section left unsold, such fraction may be sold. Any bona fida purchaser who has heretofore purchased or who may hereafter purchase any lands as provided herein shall have the right to purchase other lands in addition thereto; provided, that the total of his purchases shall not exceed four sections, and that it shall not include more than two sections of agricultural land, upon his making oath that he is not acting in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is interested in the purchase thereof. And if he or his vendor has already resided upon his home section for three years, or when he or his vendor, or both together, shall have resided upon it for three years, the additional lands purchased may be patented at any time. In all cases where a settler purchases more than one section the lands in excess of one section so purchased must be situated within a radius of five miles of the land occupied by him. Where any of the lands referred to in this act have been sold prior to July 30th, 1895, in quantities greater or less than forty acres or multiples thereof, and are in good standing as to interest payments, they may be patented in such quantities. In any cases where lands have been forfeited to the State for the non-payment of interest, the purchasers or their vendees may have their claims reinstated on their written request, by paying into the treasury the full amount of interest due on such claim up to the date of reinstatement; provided, that no rights of third persons may have intervened. In all such cases the original obligations and penalties shall thereby become as binding as if no forfeiture had ever occurred.

Article 4216ff. When any purchaser buys and settles upon a section or part of a section of school lands, and buys, either

at the same time or subsequently, other lands in addition thereto, a forfeiture for any legal cause of the part on which he resides, at any time before the three years residence thereon has been completed, shall work a forfeiture of the entire purchase, except such part thereof as he may have previously sold to another. But after the three years residence has been completed, a forfeiture of the home tract shall not of itself work a forfeiture of the other tract or tracts. In case of sale of any of said tracts before the three years residence has been completed, the vendee must reside thereon until he has completed the three years occupancy from the date of the original purchase, and a failure to do so shall subject his land to forfeiture; but in case of sale of any of said tracts after the completion of the three years residence, the vendee shall be exempt from the condition of settlement and occupancy.

Article 4218fff. Any actual, bona fide owner of and resident upon any other lands contiguous to said lands, or within a radius of five miles thereof, may also buy any of the aforesaid lands, but in such case a failure to reside upon either his other lands or upon a part of the additional lands so purchased by him, so as to make his ownership and occupancy thereof continuous for three years, shall work a forfeiture of such additional lands so bought from the State, unless he shall have sold his land to another who may and does complete a three years continuous ownership and occupancy of and residence upon his said lands as above stated and as is herein required of actual settlers.

Article 4218h. All agricultural lands belonging to the public free schools and the several asylum funds shall be sold at not less than one dollar and fifty cents per acre; and all grazing lands shall be sold at not less than one dollar per acre; and all timbered lands shall be sold at not less than five dollars per acre. By timbered lands is meant lands valuable chiefly for the timber thereon. Provided, that the owner of land which is in fact agricultural, purchased under former laws, and which land is not subject to forfeiture at the time this law goes into effect, shall not be permitted, in case said land is forfeited, to purchase said forfeited land from the State for

a less price per acre than the contract price under the former sale.

Article 4218s. Any person desiring to lease any portion of the lands belonging to any of the funds mentioned in this chapter, shall make application in writing to the commissioner of the general land office, specifying and describing the particular lands he desires to lease, and thereupon, the commissioner, if satisfied that the lands applied for are not in immediate demand for purposes of actual settlement, shall notify the applicant in writing that his proposition to lease is accepted, and thereupon he shall execute to the lessee in the name and by the authority of the State of Texas a lease of said land for such time as may be agreed upon, and when satisfied that the lessee has paid to the treasurer of the State the rent for one year in a advance, shall deliver said lease to the clerk of the county court of the county in which the land is situated or of the county to which said county is attached for judicial purposes, and it shall be the duty of the clerk to record in a well bound book, to be kept in his office, open to public inspection, a memorandum or abstract of said lease, sh wing the number of the survey or surveys leased, the name of the original grantee, the amount leased, the name of the lessee, the date of the lease, and the number of years it has to run; and for entering said memorandum the clerk shall be entitled to a fee of twenty-five cents. Upon the payment of said fee, the clerk shall deliver the lease to the lessee; and no other record of leases hereafter made shall be required except said memorandum.

All lease contracts heretofore made and not recorded, shall be filed for record with the clerk of the proper county, within three months after this act takes effect, and if any lessee shall fail to have his unrecorded lease so filed for record within said time, the Commissioner of the General Land Office shall disregard said lease, and award the land to any other applicant accompanying his application with the certificate of the clerk that no lease of said land is of record in his office. When any of such leases are filed for record, the clerk shall make the memorandum or abstract above provided for. All lands

which may be leased shall be subject to sale at any time except where otherwise provided herein. This provision in regard to the sale of leased lands shall apply to leases heretofore made, as well as to those hereafter to be made. Any section or part of a section which may be leased, shall not be sold, nor shall the lessee be disturbed in his possession thereof during the term of his lease, in the following cases:

1. When the lessee has actually settled upon such section, or part of a section, and erected thereon his residence and substantial improvements for permanent settlement.

2. When he has placed on such section or part of a section improvements of the value of two hundred dollars.

3. When the aggregate of the land owned by a settler and leased by him does not exceed one section.

Any lands which may be leased south and west of the line herein designated shall not be sold during the term of the lease until otherwise provided by law; provided, the sections leased by any one party are not so selected as to detach sections which are thereby left unleased. Said line begins at the northwest corner of Yoakum County; thence East, to the northeast corner of Kent County; thence South to the north line of Fisher County; thence West, to the northeast corner of Scurry County; thence south, to the north line of Coke County; thence East, to the northwest corner of Runnels County; thence South, to the southwest corner of Runnels County; thence East, to the northwest corner of Concho County; thence South, to the southwest corner of Concho County; thence East, to the southeast corner of Concho County; thence South, to the southwest corner of McCulloch County; thence East, to the southeast corner of McCulloch County; thence South, to the southwest corner of San Saba County; thence East, to the northwest corner of Llano County; thence South, to the southeast corner of Mason County; thence West, to the northwest corner of Gillespie County; thence South, to the southwest corner of Gillespie County; thence East, to the northeast corner of Kerr County; thence South, to the southeast corner of Bandera County; thence West, to

the northeast corner of Uvalde County; thence South, to the southwest corner of Medina County; thence East, to the northeast corner of Frio County; thence South, to the northeast corner of La Salle County; thence East, to the northeast corner of McMullen County; thence South, to the southeast corner of McMullen County; thence East, to the Nueces river; thence down said stream to its mouth: Except in that portion of the State South and West of the above delineated line, any actual settler shall have the right to lease within a radius of five miles of the land occupied by him, not exceeding three sections of the land held by a lease holder who is leasing more than ten sections from the State, but shall not be allowed thereby to reduce the large leasehold to less than ten sections. In all cases where the lease is terminated under any of the provisions of this act before the expiration of the term of lease, the lessee shall have a pro rata credit upon his next year's rent, or the money refunded to him by the treasurer, as he may elect. On the expiration of his lease, or its termination under any provision of law, the lessee shall have the right for the period of sixty days to remove any or all improvements he shall have placed upon the leased premises. No purchaser or other person than the lessee shall be permitted to turn loose within such lessee's inclosure more than one head of horses, mules or cattle, or in lieu thereof four head of sheep or goats, for every ten acres of land so purchased, owned or controlled by him and uninclosed. Each violation of the provisions of this act, which restrict the number of stock which may be turned loose in such inclosure, shall be an offense, and the offender, on conviction, shall be punished by a fine of one dollar for each head of stock he may so turn loose, and each thirty days' violation of the provisions of this section shall constitute a separate offense.

Article 4218y. The Commissioner of the General Land Office may withhold from lease any agricultural lands necessary for the purpose of settlement, and no agricultural lands shall be leased, if, in the judgment of the Commissioner, they may be in immediate demand for settlement, but such lands shall be held for settlement, and sold to actual settlers only, under the provisions of this chapter; and all sections and fractions

of sections, in all counties organized prior to the first day of January, 1875, except El Paso, Presidio and Pecos Counties, which sections are isolated and detached from other public lands, may be sold to any purchaser, except to a corporation, without actual settlement, at one dollar per acre, upon the same terms as other public lands are sold under the provisions of this chapter.

Sec. 2. The fact that the existing law makes no provision for a reclassification of lands which have been erroneously classified, thus working great injustice in many cases, and that the opinion has been given out from the attorney general's office that no lands are subject to sale during the term of the lease, thus preventing settlement, create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended, and that this act take effect and be in force from and after its pasage, and it is so enacted."

Act Approved April 19, 1901

SECTION 1. That it shall be the duty of the Commissioner of the General Land Office to notify in writing the county clerk of each county the classification and valuation fixed upon each section of land in his county, and in each county attached to it for judicial purposes, and said Commissioner of the General Land Office shall make forthwith a correct and revised list for each county of all unsold lands therein, and he shall forward the same by registered letter to the county clerk of the county for which said list was made, or to the county clerk of the county to which said county is attached for judicial purposes, and the Commissioner of the General Land Office shall, on application therefor, furnish any citizen a copy of said list for as many counties as applied for, making a reasonable charge for such list or lists, and the Commissioner of the General Land Office shall file the return receipt for said registered letter among the papers of his office and keep the same for future reference; and said Commissioner of the General Land Office shall also notify said clerk of each and every sale as soon as said sales are made. Upon receipt of

said list, or any notice required to be given under the provisions of this act, the county clerk receiving the same shall forthwith file and record said list in a well bound book to be kept for that purpose, and thereafter when notified of the sale of any section of land therein described he shall enter opposite the description of the land so sold the name of the purchaser and the date when sold; and the said list so furnished said clerk, and said book shall be considered public records and open to public inspection, and it is hereby made the duty of the county clerk to exhibit said book and the records to any person who shall apply to him therefor. For the purpose of furnishing the several counties in this State and the clerks thereof with a revised list of all the unsold lands in this State, as provided in this act, the Commissioner of the General Land Office is hereby authorized to employ four expert clerks at a salary not to exceed one hundred dollars per month each; provided, their services shall de discontinued when said list shall have been made, and provided the employment shall not exceed six months. The sum of twenty-four hundred dollars, or so much thereof as may be necessary, is hereby appropriated, for the purpose of carrying into effect the provisions of this act.

In case any county clerk of any county in this State after the receipt of the list of unsold lands or notices concerning the same hereinbefore provided to be sent to him by the Commissioner of the General Land Office shall fail to file, record or exhibit the same as hereinbefore provided, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars.

Sec. 2. Any person desiring to purchase school or asylum land shall make a separate application for each tract applied for, addressed to the Commissioner of the General Land Office, describing the lands sought to be purchased, which application shall be accompanied with the affidavit of the applicant in effect that he desires to purchase the land for a home and has in good faith settled thereon, except where otherwise provided by law; and he shall also swear that he is not acting

in collusion with others for the purpose of buying land for any other person or corporation, and that no other person or corporation is interested in the purchase thereof. He shall accompany said application with his obligation to the State, duly executed, binding the purchaser to pay to the State on the first day of November of each year thereafter until the whole purchase is paid one-fortieth of the aggregate price with interest at the rate of three per cent per annum on the whole unpaid purchase money, which interest shall also be payable on the first day of November of each year. Said application, oath and obligation shall be filed in the office of the county clerk of the county in which the land is applied for or a part thereof is situated, or of the county to which said county is attached for judical purposes; but the clerk shall not file such application until the applicant shall have deposited with him the first payment of one-fortieth of the aggregate purchase money for the particular tract of land. Upon the receipt of said application and first payment, the county clerk shall endorse officially on the application the day and the hour of filing, and record the same in full in a well bound book to be kept by him for that purpose, and shall also note on his record of unsold school lands, the name of the applicant and the date the application is filed and as soon as the application is recorded, the book and page where recorded. The county clerk shall record the application and obligation without delay, recording all applications in the order in which they are filed, and shall forthwith transmit them when recorded to the Commissioner of the General Land Office, and the first payment to the State Treasurer. All applications shall take effect from the time they are filed in the office of the county clerk of the proper county; and for filing and recording each application and noting the name of the applicant and date of application on the record of unsold lands and transmitting it to the Commissioner of the General Land Office and the first payment to the State Treasurer, and all other services in connection therewith, the clerk shall be entitled to a fee of one dollar for each application, to be paid by the applicant. Any failure or refusal of the county clerk to perform any duties required in this section shall be an offense and upon conviction he shall be fined not

less than one hundred dollars nor more than five hundred dollars.

Sec. 3. The Commissioner of the General Land Office is hereby prohibited from selling to the same party more than four sections of land, and all applications to purchase land shall also disclose the prior lands purchased by the applicant from the State, if any, since the taking effect of this act, and the residence of the applicant at said time, and if it appear therefrom or from the records in the Land Office that said applicant has already purchased land aggregating four sections since the taking effect of this act, his application shall be rejected; provided, this shall not apply to sale made to a purchaser and afterwards canceled as invalid for some reason other than abandonment and where the purchaser himself was not at fault. Every purchaser shall be required within three years after his purchase to erect permanent and valuable improvements on the land, purchased by him, which improvements shall be of the reasonable market value of three hundred dollars. If any purchaser shall fail to reside upon and improve in good faith the land purchased by him as required by law, he shall forfeit said land and all payments made thereon to the State, to the same extent as for the non-payment of interest, and such land shall be again upon the market as if no such sale and forfeiture had occurred, and all forfeitures for non-occupancy shall have the effect of placing the land upon the market without any action whatever on the part of the Commissioner of the General Land Office; and if any purchaser shall be forced to yield possession of the land purchased by him from the State on account of any writ or other judicial precess issued from a court of competent jurisdiction, or be compelled to temporarily yield his possession from a wellgrounded fear of death or serious bodily injury, such absence shall not work the forfeiture provided by law for non-occupancy; but no writ of injunction shall issue in any case involving the title or possession of lands herein referred to, where the applicant has an adequate remedy at law by sequestration or otherwise.

Sec. 4. Any person desiring to lease any portion of the lands belonging to any of the funds mentioned in this act shall

make application in writing to the Commissioner of the General Land Office, specifying and describing the particular lands he desires to lease; and thereupon the Commissioner, if the lands applied for are subject to lease, and not in immediate demand for actual settlement, shall notify the applicant in writing who first files written application therefor that his porposition to lease is accepted, and thereupon he shall execute to the lessee in the name and by the authority of the State of Texas a lease of said lands for such time as may be agreed upon, not to exceed five years; and when satisfied that the lessee has paid to the Treasurer of the State the rent for one year in advance, he shall deliver said lease to the clerk of the county court of the county in which the land is situated, or of the county to which said county is attached for judicial purposes, and it shall be the duty of the clerk to record in a well bound book kept in his office, open to public inspection a memorandum or abstract of said lease, showing the number of the survey or surveys leased, the name of the original grantee, the amount leased, the name of the lessee, the date of the lease and the number of years it has to run; and for entering said memorandum the clerk shall be entitled to a fee of twenty-five cents. Upon payment of said fee the clerk shall deliver the lease to the lessee and no other record of leases hereafter made shall be required except said memorandum. When any of such leases are filed for record the clerk shall make the memorandum or abstract above provided for. All lands which may be leased shall be subject to sale at any time, except where otherwise provided herein. This provision in regard to the sale of leased lands shall apply to leases heretofore made as well as to those hereafter to be made. Any section or part of a section which may be leased shall not be sold except to the lessee, nor shall the lessee be disturbed in his possession thereof during the term of his lease, when he has placed on such section or part of a section improvements to the value of two hundred dollars. In the following named counties lands heretofore leased not be subject to sale until said leases expire, except as herein provided, towit: Kent, Garza, Lynn, Scurry, Borden, Dawson, Mitchell, Martin, Howard, Coke, Sterling, Glasscock, Tom Green, Irion,

Schleicher, Menard, Mason, Uvalde, Frio, Kerr and Bandera, provided, that after the expiration of five years from the date this act takes effect all lands now under lease in any of the counties above named shall be subject to sale regardless of the fact as to whether or not the lease on the land has expired.

Sec. 5. The following counties shall constitute the absolute lease district, towit: El Paso, Jeff Davis, Presidio, Brewster, Reeves, Pecos, Loving, Winkler, Ward, Yoakum, Terry, Gaines, Andrews, Ector, Midland, Upton, Crane, Crockett, Sutton, Val Verde, Edwards, Kinney, Maverick, Zavala, Dimmit, La Salle, McMullen, Webb, Duval, Nueces, Kimble, Zapata, Starr, Hidalgo and Cameron. All tracts of land lying partly inside and partly outside of the absolute lease district shall be considered for the purpose of sale and lease, as being wholly without said district. And lands situated in the absolute lease district which may be leased shall not be sold during the term of the lease, except as provided herein. On the expiration of any lease in the absolute lease district the lands shall remain subject to sale for a period of sixty days, except where there are improvements on a section of the value of two hundred dollars or more, and if it has been previously classified and valued by the Commissioner of the General Land Office, and notice given to the county clerk, it shall not be necessary to give the clerk any further notice in order to put the land on the market, but it shall be considered as already on the market and subject to sale. During said period of sixty days the Commissioner of the General Land Office shall suspend action upon any application to lease said land, and shall award it upon any legal application to purchase made during said time. And that the party purchasing any of said lands, whether inside or outside of the absolute lease district, within the inclosure of another, shall not turn loose any stock within the inclosure until he shall have provided sufficient water for the stock so turned loose, and any violation of this provision shall be an offense, and upon conviction the party so offencing shall be fined one dollar for each head of stock so turned loose, and each thirty days violation shall constitute a separate offense. If no application

to purchase has been filed in the proper county clerk's office within sixty days after the expiration of the lease, then the former lessee shall have a preference right over any one else for thirty days thereafter to re-lease such lands or any part thereof, but his lease shall run from the expiration of his old lease. In all cases where the lease is terminated under any of the provisions of this act before the expiration of the term of lease, the lessee shall have a pro rata credit upon his next year's rent or the money refunded to him by the Treasurer as he may elect. On the expiration of his lease or its termination under the provisions of law, or by a final judgment of any court of competant jurisdiction, the lessee shall have the right for the period of sixty days to remove any or all improvements he shall have placed upon the leased premises. No purchaser or other person than the lessee shall be permitted to turn loose within such lessee's inclosure more than one head of horses, mules or cattle, or in lieu thereof, four head of sheep or goats, for every ten acres of land so purchased, owned or controlled by him and uninclosed. Each violation of the provisions of this act which restricts the number of stock which may be turned loose in such inclosure shall be an offense, and the offender, on conviction, shall be punished by fine of one dollar for each head of stock he may so turn loose, and each thirty days' violation of the provisions of this section shall constitute a separate offense. The Commissioner of the General Land Office is hereby prohibited from renewing any lease before its expiration, as shown on the face of the original lease contract; and no lease contract shall be canceled, except in cases where the land has been or may be sold as provided by law, or where the lessee fails to pay the annual rental due the State within sixty days from the date it becomes due. And when the lessee shall fail to pay his annual rental within sixty days after it becomes due, the Commissioner of the General Land Office shall cancel said lease and immediately notify the county clerk of the county in which the land, or a part thereof is situated, of the cancellation and the date when canceled, and the clerk shall note the date of cancellation on his lease record, and the land shall be on the market for sale sixty days after said cancellation.

Sec. 6. Any lessee shall have sixty days prior right to purchase lands as an actual settler at expiration of his lease; and provided further that if the sections sought to be purchased have eaech improvements upon them of a permanent nature of the value of five hundred dollars, that then said section or sections need not be situated within the five mile radius as fixed by law, and provided further, that all lands purchased under this act that are not purchased under this preference right herein given lessees shall be situated within the five mile radius now required by law.

Sec. 7. All lands which are now or which may hereafter detached lands shall be sold to actual settlers only on such terms conditions as are now or which may hereafter be provided by law.

Sec. 8. The Commissioner of the General Land Office shall adopt such regulations for the sale of timber on the timbered lands as may be deemed necessary and judicious. Such timber shall not be sold for less than five dollars per acre cash, except in such cases as the Commissioner may ascertain by definite examination by an approved agent appointed by him for that purpose, to be paid by the purchaser, to be sparsely timbered or containing timber of but little value, in which case he may sell the timber on such sections or part of sections at its proper value, provided such timber is sold at not less than two dollars per acre. The purchaser shall have five years from the date of his purchase within which to remove the timber therefrom, and in case of failure to do so, such timber shall thereby be forefited to the State without judicial ascertainment; provided, that all timbered lands from which the timber has been cut and takn off may be placed on the market and sold as agricultural or grazing lands, according to classifications to be made by the Land Commissioner; provided, that upon application of the purchaser or his vendees of any such timber made within five years from the purchase of such timber the Commissioner of the General Land Office shall have said land classified at the expense of the owner of said timber as agricultural or grazing land, and the owner of said timber shall have the right to purchase said land

tribute his proportion of the expenditure required, his interest in the claim shall cease beyond the amount which he may have previously expended thereon and become the property of his co-owners, who may have made the required expenditures. An affidavit by the co-owners of the facts accompanied with the notice given shall, when recorded in the proper county surveyor's office, be sufficient evidence of such delinquency and forfeiture in all interest in such claim. If patent should be applied for on such claim it shall be issued to the owners if the proper evidence of forfeiture of such interest be filed in the land office. This article shall apply only to the claims filed on land containing the minerals named in the preceding article.

Article 34981. If the application and affidavit provided for in Article 3498f are not filed with the proper County Surveyor within ninety days from the date of the first posting and if the application, affidavit, fied notes filing fee and obligation are not filed in the Land Office or the first payment is not paid to the State Treasurer within the sixty days as required in Article 3498f the file and claim thereunder shall be void. If any part of an annual interest or any part of an annual payment of principal remains unpaid for thirty days after it becomes due on any claim, such claims shall be subject to forfeiture by the Commissioner of the General Land Office by an endorsement on the obligation "Forfeited" signed officially by him, and thereupon all payments shall also be forfeited to the fund to which the land originally belonged. All forfeited claims may be reinstated upon written request of one or more owners filed in the Land Office and payment of all interest and principal due; provided, no rights of another has not intervened at date of filing such request in the Land Office. One interested in a claim at the time it was forfeited shall not be eligible to relocate or refile upon the same land for himself or on behalf of any other person, and any such location or attempt to locate by such person shall be wholly void. Whenever any land theretofore covered by a forfeited claim shall be relocated, the locater or locaters and each of them shall make an affidavit that the location is made without any contract or agreement or understanding

of any kind; that none of the parties theretofore owning an interest in the forfeited claim before the relocation have or is to have any interest in the same under the new location. In all other cases where an affidavit is required by this title it may be made by one or more of the parties cognizant of the facts. This article shall apply only to claims filed on land containing the minerals named in Article 3498f.

SECTION 2. Article 3498m, Revised Civil Statutes of 1895 is hereby repealed.

SECTION 3. The fact that persons who file on mineral lands containing gold, silver, cinnabar, lead, tin and copper can work them for five years without paying anything to the fund to which the land belongs and then forfeit it without recourse by the State for what may have been taken out of it, and then the same claim may again be filed on and worked another five years without payment, and so on indefinitely until a valuable mineral deposit may be exhausted to the detriment of the fund to which the land belongs creates an emergency and an imperative public necessity that the constitutional rule requiring bills to be read three separate days be suspended, and that this act be placed upon third reading and final passage, and it is so enacted.

Act Approved May 16, 1907

SECTION 1. Sections 5 and 6, Chapter 103, approved April 15, 1905, shall be amended so as to hereafter read as follows:

RIGHTS OF LESSEES.

Sec. 5. An original lessee of a lease executed prior to April 15, 1905, who has never parted with any interest in his lease except by purchase, may purchase out of such lease in whole surveys only, one complement of sections or such part thereof as will make his total purchase since April 19, 1901, not to exceed eight or four sections, according to the county; provided an original lessee who has not heretofore exercised his

at the valuation fixed by said Commissioner on the same terms and conditions as other lands of like classification are sold under the provisions of this chapter.

Sec. 9. That all laws and parts of laws in conflict with this act are hereby repealed.

Sec. 10. The importance of the legislation proposed and the crowded condition of the calendar rendering it improbable that this bill can be read on three several days creates an imperative public necessity that the constitutional rule requiring bills to be read on three several days be suspended and that this act take effect from and after its passage; and it is so enacted.

Act Approved April 15, 1905

Section 1. Articles 3498f, 3498g and 34981 of the Revised Civil Statutes of 1895 be so amended as to hereafter read as follows, to-wit:

Article 3498f. The locater shall, within three months after the date of posting the required notice, file with the county surveyor of the county in which the land or a part thereof is situated an application in writing for the survey of the claim, giving the name of the claim and such designation of its boundaries and location as to enable the surveyor to identify the land. The application shall be accompanied by a fee of twenty dollars, unless its tender is waived, and also with an affidavit attached thereto that the applicant has found valuable minerals, stating the kind, on the claim, also the date of the first posting of the notice on the claim by the applicant and that the notice has not been post dated nor changed in its date. Upon receiving the application and affidavit and fee the surveyor shall record the application and affidavit and shall forthwith proceed to survey the claim. After the field notes are recorded and a plat of the survey is made by the surveyor, he shall deliver the application and affidavit together with the field notes and plat to the applicant or his agent, who shall forward same to the commissioner of the general land office with one dollar as a filing fee. When the applicant

forwards the papers aforesaid to the commissioner he shall at the same time forward to the State Treasurer one-fifth of the aggregate price of the land as the first payment thereon. The applicant shall also file in the land office with his other papers his obligation to the State for the remaining unpaid purchase money, binding himself to pay to the State of Texas at the State treasury in Austin, Texas, one-fifth of the unpaid purchase price, together with four per cent interest annually after the date of the filing of said papers in the land office, and until the entire purchase price and interest are fully paid. The papers aforesaid shall be filed in the land office within sixty days from the date the application was filed with the county surveyor, and not thereafter. The fee of twenty dollars shall cover all charges by the surveyor in connection with any one claim. A claim filed on under this title for gold, silver, cinnabar, lead, tin or copper, zinc, tungsten, molybdenum and uranium may be paid out in full at any time within five years from the date the papers were filed in the land office. All mineral lands shall be sold at such price as may be fixed by the land commissioner, but in no event shall the same be sold at a price less than twenty-five dollars per acre, nor until he has ascertained approximately their value; provided, that no person, firm or corporation or association of persons shall be permitted to locate or file on more than five claims of twenty-one acres within a radius of five miles. This Article shall apply only to the claims filed on land containing the minerals herein named.

Article 3498g. Upon the failure of any one of the several owners to contribute his proportion of the expenditure required in this article within the necessary time, the co-owner or co-owners who have paid the fees, or interest or principal, may at the expiration of the time in which the payment was to be made and was so made by him, give notice in writing to such defaulting co-owner, or give such notice by publication in a newspaper published in the county where the claim is, if any; if none in such county, then in the newspaper published nearest the mining claim, for at least once a week for ninety days. If after such personal notice in writing or by publication such delinquent shall fail or refuse to con-

right to buy one complement of sections out of one or more leases and should not hereafter desire to do so, may assign one or more leases to a qualified purchaser and his assignee shall have the same right to purchase out of the leases one complement of sections, or such number thereof as the assignor may be qualified to purchase or such number as the assignee may be qualified to purchase; provided that in case the assignment should have been made and acknowledged before an officer authorized to take acknowledgments the assignee may exercise that right as provided for under the Act of April 15, 1905. Only one complement shall be sold out of any lease, including that heretofore sold out of it. One who desires to buy land out of his lease shall first give written notice to the Commissioner of the General Land Office and specify the land he wants to buy not less than sixty days prior to expiration of the lease. The Commissioner shall make or cause to be made an inspection of the land, if he is not already in possession of sufficient information, and appraise same at its reasonable market value, and advise such person and the proper county clerk of the value placed thereon. Thereafter the land shall be subject to sale to the lessee only during the life of the lease. After a lease expires or is cancelled, no one shall have any preference to purchase any land contained therein.

EIGHT SECTION COUNTIES-COMPLEMENT OF LAND.

Sec. 6. One who has not purchased any land since April 19, 1901, may purchase, on condition of settlement, in the counties of Brewster, Crockett, Edwards, El Paso, Jeff Davis, Kinney, Pecos, Presidio, Sutton, Terrell and Val Verde not to exceed eight sections of 640 acres each, more or less, which are wholly within said counties. One who has heretofore or who may hereafter purchase a complement as aforesaid, shall not purchase any more. One who has purchased or may hereafter purchase on condition of settlement four sections of 640 acres each, more or less, wholly or partly within any county other than those hereinabove named since said date, shall not purchase any more on condition of settlement. One who has purchased less than a complement as aforesaid may hereafter purchase

in any county, such number of sections as his lack of a complement in the county of the former purchase bears to a complement in the county of such former purchase. One who has heretofore purchased land on condition of settlement which lies partly within an eight-section county and partly within a four-section county shall be considered for the purpose of future purchase by him as having purchased in a four-section county. Every additional survey applied for shall be situated within five miles of the designated home tract except the survey on which the lessee, who may apply to buy out of his lease, may have placed permanent and immovable improvements of the value of five hundred dollars, need not be within such radius. No survey shall be sold in any county except as a whole, notwithstanding it may be leased in two or more parts.

SEC. 2. Add thereto Sections 6a, 6b, 6c, 6d, 6e, 6f and 6g, as follows:

SETTLEMENT AND RESIDENCE

Sec. 6a. All of the surveyed school land wholly or partly within the counties of Andrews, Brewster, Cameron, Crane, Crockett, Dimmit, Duval, Ector, Edwards, El Paso, Gaines, Hidalgo, Jeff Davis, Kimble, Kinney, La Salle Loving, Maverick, McMullen, Midland, Pecos, Presidio, Reeves, Starr, Sutton, Terrell, Terry, Upton, Uvalde, Val Verde, Ward, Webb, Winkler, Yoakum, Zapata and Zavala shall be sold on condition of settlement as provided by this act and existing statutes, except tracts of one hundred acres or less shall be sold for cash. The land purchased by one either for cash or on deferred payment without condition of settlement shall not be computed against him in his purchase on condition of settlement. Every purchaser on condition of settlement shall in person reside continuously on either the designated home tract or on some portion of the land purchased as additional thereto for three consecutive years next succeeding the date of the award of the home tract, or from the date of the award of the first tract, as additional to a home already owned, as the case may be, including the ninety days allowed to settle. The proof of such

settlement and residence shall be made as now provided by statute.

SALES WITHOUT SETTLEMENT

Sec. 6b. The surveyed school and asylum land and the timber thereon situated wholly within any county other than those named in the preceding section and which is now unsold shall be advertised and subject to sale on November 1, 1907, and not before, and to the one offering the most therefor and in whole tracts only. On said date the said land and timber thereon shall be subject to sale and so remain until sold. The said land shall be sold in whole tracts only without condition of settlement or limit as to quantity and either for cash with the right to patent at once, or for one-fortieth cash with five per cent interest on the deferred payment, together with all the pains and penalties of forfeiture for non-payment as is now or may hereafter be provided by law. When any such purchase is fully paid for the land may be patented. No land on which there is merchantable timber shall be sold until the timber is sold for cash and fully paid for. Should two or more applicants offer the same price for any tract on the same date, the same being the highest price offered, and one should offer full cash payment and another should offer one-fortieth cash payment and balance on time, the application on deferred payment shall be accepted. Such of the land in the counties included within this section as is now sold but which may hereafter become subject to sale shall not be subject to sale until the former sale shall have been cancelled and the land and timber, if any thereon, shall be reappraised by the Commissioner and a date fixed, not more than sixty days from the date of such cancellation, when it may be subject to sale to the one offering the highest price therefor. Notice of such cancellation and reappraisement shall be mailed to the proper county clerk, together with the date when the land and timber, if any, will be subject to sale.

TIMBER AND LAND

Sec. 6c. One who applies to purchase the timber shall file his application in writing in the General Land Office in the manner

now provided for the filing of applications for the purchase of land, and pay to the State Treasurer the full cash payment according to the price offered therefor, but not at a less price than that fixed by the Commissioner. Should two or more persons each apply to purchase the timber and land on the same day and one should offer more for the timber but less for the land than a competitor, then the one offering the highest price for the timber shall have an option for thirty days, as now provided by law for designating home tracts, to take the land at the highest price offered by such competitor. Should the one offering the highest price for the timber not want the land at such highest price, but should want the timber, it shall be awarded to him. Should one who applies for both timber and land offer the highest price for the land, but a lower price for the timber, he shall have an option of thirty days as aforesaid to purchase the land if it should not be purchased by the one who offers the highest price for the timber, but should the one who offers the highest price for the timber and the lesser price for the land not want the land at such high price, nor should he exercise his option by purchasing the timber alone, then the land and timber shall be awarded to the one offering the highest price for the land and next highest price for the timber. The Commissioner shall appraise all timber at its reasonable market value, and it shall not be sold at a price less than that so fixed by him. Should two or more applications for timber alone be filed on the same day, the one offering the most therefor shall be accepted. All timber shall be sold in full tracts. The purchaser of timber without the land shall have the right of ingress and egress upon the land for a period of five years after date of award for the purpose of removing or protecting the timber thereon, and the purchaser shall be entitled to all the timber thereon for that period and no longer. After that time the title to the timber shall revert to the fund to which the land belonged and be again subject to sale by the State unless the land shall sooner be sold and fully paid for and patent issued thereon, and in that event the timber shall revert to the owner of the land. The owners of timber heretofore purchased which has not been removed and the five years in which to remove same or to purchase the land have not expired, but may expire on or before November 1, 1907,

may purchase the land on that date at the price fixed by the Commissioner and without condition of settlement, either for cash or on deferred payment, with five per cent interest as provided in this act for other purchasers without settlement. In case the five years do not expire before said date, only the owner of the timber shall have the right to purchase the land as herein provided at any time prior to the removal of the timber and within the five years allowed in which to remove same. Land on which timber has heretofore been sold and the timber has been or may be removed, or the five years shall have expired and the land not purchased by the owner of the timber, shall not be sold until it is re-classified and reappraised by the Commissioner and a date fixed not more than sixty days after such action for the sale thereof. Notice of such action and date fixed for sale shall be mailed to the proper county clerk.

TRANSFER

Sec. 6d. One who hereafter buys land on condition of settlement shall not sell any part of such purchase prior to one year after date of award of the home tract, nor prior to one year after date of the award of the first additional tract purchased to a formerly acquired home unless the required residence has sooner been completed. After the lapse of the time aforesaid the purchaser may sell all of his land or any part thereof in whole tracts, according to his purchase, to another qualified purchaser, who will become an actual bona fide settler on some part thereof at date of his transfer if the residence is not complete, and such assignee shall complete the residence on the land by continuous residence thereon as required of his vendor, and if the vendor does not sell all of his purchase he shall continue to reside upon his home tract or on some part of that retained until the completion of the residence required of him. A purchaser on condition of settlement under this act, or any former law, who may have the right to sell his land or a part of it, may sell his whole home tract or one or more of his additional tracts as a whole, according to his purchase to another purchaser who owns a designated home tract within five miles of each of such tracts as he may purchase as assignee, and the assignee may take each

of the tracts as additional to his own designated home tract; provided the total tracts so purchased by an assignee prior to the completion of the residence of the vendor, together with the former purchase of the assignee, shall not exceed one complement of sections. In such cases the assignee shall continue to reside in person upon either his formerly designated home tract, or on one of his formerly acquired additional tracts, or on one of his additional tracts purchased as assignee, continuously until the completion of the residence required of him under his former purchase and that of his vendor. No tract hereafter purchased shall be transferred except as a whole prior to the issuance of patent thereon, but should a transfer of less than a whole tract be made after the purchaser has the right to sell in whole tracts under the provisions of this act, such transfer shall not be void, but the owner shall not be substituted as assignee on the records of the Land Office nor recognized on the accounts kept by the State Treasurer. The failure to pay the interest on the whole of such tract shall operate as a forfeiture of ever part thereof.

GENERAL PROVISIONS

Sec. 6e. One who has heretofore or who may hereafter purchase land out of a lease or otherwise, on condition of settlement in the counties named in Section 6a of this act, and fails to settle thereon within the required time, or fails to file in the Land Office his affidavit of settlement within the required time, or fails to comply with the law as to residence on the land, or executes a transfer contrary to the provisions of this act, except those stated in this act as not being void, he shall forfeit the land and all payments made thereon to the fund to which the land belongs and when the Commissioner shall be sufficiently informed of the facts which operate as a forfeiture, he shall cancel the award or sale by noting the act of forfeiture on the obligation and mail notice of that fact to the proper county clerk. Such land shall not be subject to sale again at a less price than the former sale price unless the Commissioner shall have reappraised the land at a less price after noting the act of forfeiture.

All applications for the purchase of land without settlement and either for cash or on deferred payment shall be in writing and accompanied by the affidavit of the applicant that he desires the land for his own benefit and not for any other person or corporation. An application on deferred payment shall be accompanied by the obligation for the balance of the purchase money conditioned as now provided by statute. No application shall be considered if the cash payment is not in the State Treasury as now provided by law. If for any cause an application for land or timber which offers the highest price can not be accepted, those offering the next highest price and filed on same day shall be considered in their order of price until one may be awarded.

All surveys and unsold portions of surveys shall be sold as a whole. All unsurveyed tracts of 640 acres or less shall be sold as a whole, and all tracts of more than 640 acres shall be sold in such tracts as may be required or approved by the Commissioner. No one shall hereafter have any preference to purchase any unsurveyed land except as provided in this act for original lessees out of leases.

All tracts containing one hundred acres or less wheresoever situated shall be sold for cash and without condition of settlement.

All applications to purchase land, under any preference right, which were filed in the Land Office prior to the taking effect of this act shall be accepted.

No corporation shall purchase any land under the provisions of this act.

Minerals, Gayule and Lechuguilla Reserved

Sec. 6f. The land which is now or may hereafter be classed as mineral, may be sold for agricultural or grazing purposes, but all sales of such land shall be upon the express condition that the minerals, shall be and are reserved to the fund to which the land belongs and such reservation shall be stated in

all applications to purchase; provided, should any person who has no authority or right to do so cut or remove any mineral, gayule or lechugilla from the land belonging to the public free school fund, he shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than ten dollars nor more than one thousand dollars and in addition thereto judgment shall be rendered against the defendant in behalf of the State in a sum of money equal to the value of the substance so cut or removed, which shall be collected as under execution, and when collected the money shall be remitted to the State Treasurer and by him credited to the fund to which the land belongs. The Commissioner shall adopt all the necessary rules and regulations for the execution of the several provisions of this act.

CERTIFICATES OF OCCUPANCY

Sec. 6g. If a proof of occupancy has heretofore been or should hereafter be filed in the General Land Office, in accordance with the statute under which the purchase was made or may be made, and it should be approved by the Commissioner by the issuance of the certificate of its sufficiency, the said certificate may be recorded in the office of the clerk of the county or counties in which the land is situated and shall thereafter be a muniment of title of the home tract and additional land purchased to such home tract.

Sec. 3. All laws and parts of laws in conflict with the provisions of this act are hereby repealed.

Sec. 4. The fact that the law providing for the sale of land out of leases to assignees is an unjust discrimination against the public and the fact that the substances mentioned in this act as being upon the public school land and reserved to the school fund should have some protection at the earliest practicable date creates an imperative public necessity and an emergency exists that the constitutional rule requiring bills to be read on three several days be suspended and this bill be placed upon its third reading and final passage and take effect from and after its passage, and it is so enacted.

Senate Bill 295, Acts of the 54th Legislature, Chapter 278 1955

Section 1. The Commissioner of the General Land Office is hereby authorized to sell to the City of El Paso, El Paso County, Texas, for a total consideration based on the aggregate fair and reasonable market value of said land, but no less that $6.50 per acre, as determined by two appraisers appointed by the Commissioner of the General Land Office of Texas, the following described Public School Lands situated in El Paso County, and described as follows, to-wit:

(AMONG OTHER LANDS)

N½ of Section 240
N. D. Mundy Survey
Containing 328.65 acres

Section 235
L. E. Mundy Survey
Containing 292 acres

and aggregate 14,000.15 acres. Said lands shall be sold upon the filing in the General Land Office of an application to purchase by the proper authority of the City of El Paso accompanied by payment of the full consideration herein provided. Such sale shall be subject to any right-of-way easements, surface leases, or any oil, gas mineral leases or permits heretofore given by the State on said lands. All mines and minerals and mineral rights, including oil and gas in and under said lands, together with the right to enter thereon for the purpose of exploration and development, are hereby reserved to the State of Texas, and said lands shall be subject to lease by the State for mineral exploration and development in the same manner as is now, or may hereafter be provided for the leasing of unsold Public Free School Lands; provided, however, that the School Land Board or other legally constituted authority offering said lands for lease shall place in said leases such rules and regulations as may be deemed proper by said board or agency for the prevention of pollution and contamination of the fresh waters in, on and under said lands.

Section 2. Upon payment of the purchase money provided herein, payments of fees required by law, and the filing in the General Land Office of any field notes or corrected field notes required by the Commissioner of the General Land Office, patents shall be issued to the City of El Paso containing the reservations provided for in Section 1 of this Act.

Section 3. The fact that the City of El Paso is in urgent need of expanding its sources of water and of protecting water wells previously drilled creates an emergency and an imperative public necessity that the Constitutional Rule that each bill be read on three separate days in each House be suspended, and such Rule is hereby suspended, and this Act shall take effect from and after its passage, and it is so enacted.